U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAY 11 2007
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IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Laura Dearnick
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a researcher. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement and additional evidence. The petitioner has not overcome the director's bases of denial.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Metallurgy from the Indian Institute of Science in Bangalore. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary

merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, ceramics, and that the proposed benefits of his work, improved coatings for ceramic gas turbines, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

As stated above, the petitioner obtained his Ph.D. in 2003 from the Indian Institute of Science in Bangalore. The petitioner's primary collaborator during this time was [redacted] however, the record contains no letters from this collaborator or any faculty member who oversaw the petitioner's Ph.D. work explaining the petitioner's role in his research at that institute. After receiving his Ph.D., the petitioner began working at the University of Colorado, Boulder, as a research associate under the guidance of Dr. [redacted] and Dr. [redacted] The petitioner remained at that institution as of the date of filing, September 28, 2005. On appeal, the petitioner submits a job offer from a Massachusetts company. Subsequently, the petitioner submitted a change of address notification indicating that he has moved to Pennsylvania. Citizenship and Immigration Services (CIS) electronic records reveal that the petitioner is now the beneficiary of an approved nonimmigrant visa petition filed by [redacted] in Pennsylvania.

While the record lacks letters from the petitioner's mentors and collaborators in India, Professor [redacted] a group leader at the Institute of Physics of Advanced Materials, Ufa State Aviation Technical University in Russia, discusses the petitioner's work in India on the effect of grain growth on creep. Specifically, the petitioner "was the first scientist to successfully demonstrate an effective means of quantitatively accounting for the effect of dynamic grain growth on creep," making "the crucial observation that it is necessary to consider grain growth while analyzing high temperature deformation behavior of polycrystalline materials." The petitioner also demonstrated "the role of particle size and shape of the reinforcement phase on the properties of glass matrix composites." This work revealed the "important role of percolation, a statistical phenomenon, in enhancing the composite properties." While Dr. [redacted] asserts that percolation has application in diverse fields, he provides no examples of industry or researchers applying the petitioner's work. Dr. [redacted] oes not claim to have been influenced by the petitioner himself.

Dr. [redacted] asserts that the petitioner's work at the University of Colorado focused on fabricating and testing novel concepts in Environmental Barrier Coatings (EBCs) for silicon-nitrite. Dr. [redacted] explains that the critical component of modern ceramic gas turbines is the ceramic blade made from silicon-nitride and silicon-carbide. EBCs are critical in protecting these blades water from vapor present in the turbine. Using knowledge already developed by Dr. [redacted] laboratory on a new generation of polymer-derived ceramics, the petitioner "fabricated model composites of polymer-derived composites containing zirconia and hafnia," materials that can withstand the conditions in a turbine. The petitioner's work "resulted in *an original insight that an optimum porosity coating architecture is best*

suited for the environmental barrier coatings." (Emphasis in original.) While this work had been presented at conferences as of the date of filing, it had yet to be published in a peer-reviewed journal.

The petitioner also developed a unique hydrothermal testing apparatus that is the first developed on an economic laboratory scale. The performance of this apparatus "is comparable to the more expensive high-pressure burner rigs currently being used in the industry." Once again, this work had yet to be published in a peer-reviewed journal as of the date of filing.

Dr[redacted] discusses the petitioner's participation in projects funded by the Department of Energy and conducted in partnership with Los Alamos National Laboratory. In order to receive funding, proposed research must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. We must evaluate the influence the research had already had as of the date of filing.

The petitioner "played a pivotal role in characterizing gas-separation membrane performance using novel instrumentation and unique testing methodology." Dr.[redacted] explains that Polybenzimidazole (PBI) is a polymer capable of performing in high temperatures. While PBI is being used in polymer-electrolyte fuel cells and to sequester carbon dioxide from fossil fuel burning, "relatively little is known" about certain aspects of PBI. Using "unique instrumentation developed by" Dr[redacted] group, the petitioner is "leading the effort to successfully characterize the high-temperature performance of this material." The database developed during this project will provide useful information to the project's corporate partner, the Dr.[redacted] asserts that the petitioner has made significant contributions to this project but does not explain how the results have already influenced the field as a whole.

Dr[redacted] also discusses the petitioner's work on predicting the lifetime of a membrane. Dr.[redacted] explains that limited knowledge about the lifetime of membranes is a barrier to the widespread use of membrane-based gas separations. Dr.[redacted] group recently applied a superposition methodology that reasonably predicts long-term behavior of membranes at lower temperatures. The petitioner "combined experimental and modeling approaches to demonstrate, to the best of our knowledge, the first-ever successful application of this methodology." Dr.[redacted] speculates that this methodology "may" provide a significant performance advantage of existing technologies for the U.S. gas-separation industry.

As with the work discussed by Dr.[redacted] Dr.[redacted] acknowledges that while the petitioner has presented the work he completed in Dr.[redacted] laboratory, it had yet to be published in peer-reviewed journals.

As noted by the petitioner on appeal, the record contains several letters from independent sources. The petitioner's assertion that the authors in these letters attest to the petitioner's influence on their own work, however, is not supported by the letters themselves.

The letters submitted initially provide general praise of the petitioner's abilities and speculate as to future applications of the petitioner's work without providing examples of how the petitioner has already influenced the field. For example, Dr. [redacted], a senior materials engineer at the National Aeronautics and Space Administration (NASA), asserts that the petitioner has expanded "the optimum parameters in the coating architecture." Dr. [redacted] notes that the petitioner's coating architecture "can easily be applied to other candidate coating materials, which is a major contribution to the field." Dr. [redacted] a professor at the University of Central Florida, provides similar information. Dr. [redacted] Vice President and Chief Engineer for Advanced Technology Associates, Inc. in Colorado, asserts that the petitioner's work has other applications beyond turbines, "including rocket combustion chambers and nozzles, corrosion resistant ceramic coated rebars for construction and ceramic-coated wood panels for low cost long lifetime housing." The fact that the petitioner works in an area with multiple applications is not determinative. The record must document the impact the petitioner's work has already had. Dr. [redacted] a principal member of the technical staff at Sandia National Laboratory, merely speculates that the petitioner's work "will play a critical role in the design of next generation environmental barrier coatings."

Dr[redacted], Director of Fuel Cells and the Northwest National Laboratory, asserts that the petitioner identified the optimum microstructural parameters or "safe-window" in which to prevent de-bonding during high temperature operations. According to Dr[redacted] this work provides "practical and realistic guidelines in designing the coatings." Dr. [redacted], Head of CVD Technology at the [redacted] Institute of New Materials in Saarbrueken in Germany, also asserts that the petitioner has "generated definitive guidelines regarding the pore-size and microstructural parameters in order to maximize the coating life." Dr.[redacted] asserts that these guidelines are useful and that petitioner's results "have led to the development of better coating strategies." Finally, Dr.[redacted] asserts that the petitioner's studies "have led to the development of definitive approaches towards optimizing composite properties by tailoring the composite microstructure." The record does not contain any evidence that the petitioner has authored "guidelines" officially adopted or recommended by any professional society or even within a specific industry or government agency.

While the letters submitted in response to the director's request for additional evidence are more specific, they still do not establish the petitioner's influence in the field. [redacted] founder and owner of [redacted] and Associates, asserts that he included the petitioner's work in his own review presentation at a Department of Energy (DOE) conference limited to U.S. citizens and permanent residents. Mr[redacted] asserts that the presentation was well received and that it would be beneficial for the petitioner to be able to present his own results. Similarly, Dr. [redacted] Director of the [redacted] and [redacted] Center and [redacted] asserts that center was unable to hire the petitioner due to his immigration status. We are not persuaded that the national interest waiver is warranted for every alien qualified to work in a field limited, for national security or other reasons, to U.S. citizens and permanent residents. Rather, the petitioner must still demonstrate his own influence in the field.

Mr. [redacted] also asserts that the petitioner authored eight DOE reports. Mr. [redacted] asserts that the DOE reports "contain state-of-the-art technological developments and milestones of importance in the micro-turbine technology program and are, therefore, used as important references by experts in DOE and its affiliated National Labs, and the industry." Finally, Mr. [redacted] asserts that he is personally using the petitioner's work to further his own work. Mr. [redacted] does not explain how he is using the petitioner's work. For example, he does not specify that he has licensed or purchased the petitioner's apparatus.

The reports referenced by Mr. [redacted] are listed on the petitioner's curriculum vitae. The petitioner also submitted the fiscal year 2005 report. On appeal, the petitioner submits a list of approximately 70 institutions researching monolithic ceramics and high temperature coatings posted on DOE's website. The petitioner's reports are consistent with the type of typical progress reports often required by a funding agency. The record is not persuasive that these reports represent reports reviewed by DOE and selected for publication or distribution as official guidance in the field.

Dr. [redacted] asserts that the petitioner's work has "triggered excitement in the research community to study the role of reinforcement morphology on percolation; especially the effect of size ratio." Dr. [redacted] further asserts that cheaper ceramics and composites are now being investigated "mainly due to" the petitioner's development of percolation guided processing methods. Dr. [redacted] however, does not indicate that he personally is pursuing this area of research or identify another researcher who is doing so. Finally, Dr. [redacted] asserts that the petitioner's work "has led to interesting developments in the fundamental application of PDCs." Dr. does not explain what those interesting developments are or who performed them.

Professor [redacted], of the University of Trieste, Italy, asserts that other researchers are already considering the petitioner's threshold velocity factor in designing better coating microstructures and utilizing his apparatus for hydrothermal testing. Professor [redacted] does not identify these other researchers and does not claim to be one of them. The record lacks evidence that the petitioner is listed as an inventor on a patent for this apparatus or evidence that the innovation has been widely licensed or licensed at all.

[redacted] Chief Executive Officer and Chairman of [redacted] Inc. (RCSI) in Colorado, asserts that RCSI has conducted its own research on ceramic coatings for wood, which it has patented, and that the petitioner's results on these types of coatings "have been extremely helpful in maturing our collaborations with the wood industry." This statement is extremely ambiguous. Ms. [redacted] implies that RCSI developed its own ceramic coating for wood and does not indicate that the petitioner is listed as an inventor on RCSI's patent. She does not clearly explain how the petitioner's work has impacted the work at RCSI. Similarly, while Ms. [redacted] asserts that the petitioner's studies on "self-healing" materials and coatings have been "helpful" to RCSI, she does not explain the petitioner's impact.

Finally, several references assert that the petitioner's influence in the field is apparent from the conferences where he has presented his work, the journals that carry his articles and the formal recognition he has received in the field. We will not presume the influence of a given presentation or article from the conference where it was presented or the publication in which it appeared. Rather, the petitioner must establish the influence of the individual presentation or publication.

In response to the director's request for additional evidence, prior counsel cites a July 30, 1992 correspondence memorandum from [redacted] Acting Assistant Commissioner, to the then Director of the Nebraska Service Center, [redacted] Mr. [redacted] issued his correspondence memorandum in response to an inquiry from Mr. [redacted] and makes clear that he is discussing his personal inclinations. Moreover, in contrast to official policy memoranda issued to the field, correspondence memoranda issued to a single individual do not constitute official CIS policy and will not be considered as such in the adjudication of petitions or applications. Although the correspondence may be useful as an aid in interpreting the law, such letters are not binding on any CIS officer as they merely indicate the writer's analysis of an issue. *See* Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000).

Moreover, in citing Mr. [redacted] memorandum, prior counsel removes a crucial phrase from Mr. [redacted]'s correspondence memorandum. Mr. [redacted] states that "entries (particularly a goodly number) in a citation index which cite the alien's work as authoritative in the field . . . would more than likely be solid pieces of evidence." Prior counsel omits the highly relevant phrase: "particularly a goodly number." As stated by the director, the record lacks evidence that the petitioner has been heavily cited. Rather, the petitioner submitted only three independent citations.

On appeal, the petitioner asserts that his field is not conducive to tracking citations. The petitioner himself, however, submitted rankings of journals in his field, which includes the total number of citations and citation half-lives for each journal. Thus, it would appear that there is a means for tracking citations in these journals. We acknowledge that Mr. [redacted] asserts that DOE reports are not traditionally cited. Assuming that this assertion is true, it is the petitioner's burden to demonstrate the significance of these reports and their influence in the field. The record lacks letters from high-level DOE officials explaining the significance of these reports. For example, reports required of every project funded by DOE do not set the petitioner apart from other researchers funded by DOE. The record lacks evidence that DOE only selects some of the research proposals and progress reports of the projects it funds for inclusion on its website.

Regarding the petitioner's recognition in the field, we acknowledge that the petitioner received student recognition and formal recognition for his poster presentation. On appeal, the petitioner asserts that the director failed to given sufficient weight to this recognition. Formal recognition for significant contributions is one of the regulatory criteria for aliens of exceptional ability, a classification that normally requires an alien employment certification. We cannot conclude that meeting one criterion, or

even the requisite three criteria for that classification warrants a waiver of that requirement. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 222.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.